

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - November 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
SHERI S. ROMAN, JJ.

2009-00040

DECISION & ORDER

In the Matter of Genaro Barbosa, appellant, v Gloria
Ventura, respondent.

(Docket No. F-37276-07)

Genaro Barbosa, Brooklyn, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Kings County (Krauss, J.), dated November 18, 2008, which, in effect, dismissed his objections to an order of the same court (Weir-Reeves, S.M.), dated September 11, 2008, which, after a hearing, dismissed, without prejudice, his petition for a downward modification of his child support obligations.

ORDERED that the order is reversed, on the law, without costs or disbursements, the objections are reinstated, and the matter is remitted to the Family Court, Kings County, for consideration and determination of the objections on the merits.

The Family Court improperly, in effect, dismissed the father's objections to the order dismissing his petition on the ground that neither party appeared at the hearing before the Support Magistrate on September 11, 2008. The Family Court should have considered the father's objections on the merits, since the record evinces that both parties appeared before the Support Magistrate (Weir-Reeves, S.M.), on September 11, 2008, and that the Support Magistrate dismissed the father's petition on the merits. Accordingly, we reverse the order appealed from and remit the matter to the

Family Court, Kings County, for consideration and determination of the father's objections on the merits (*see Matter of Telfer v Telfer*, 44 AD3d 780; *Matter of Etuk v Etuk*, 300 AD2d 483).

RIVERA, J.P., DILLON, MILLER and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court